



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

[FRL-9667-8]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement between EPA and the industry petitioners in Portland Cement Ass'n v. EPA, No. 10-1358 (D.C. Circuit). Under the settlement agreement, EPA would propose action on pending reconsideration issues and on issues raised by the court's remand in Portland Cement Ass'n v. EPA by June 15, 2012 (proposal) and December 20, 2012 (final). EPA would also address the issue of whether there should be new compliance dates for amended standards for existing sources as part of that process. In exchange, industry petitioners would agree not to seek rehearing or rehearing en banc of the D.C. Circuit's opinion in Portland Cement Ass'n v. EPA, 665 F. 3d 177.

DATES: Written comments on the proposed settlement agreement must be received by [insert date 30 days after publication date].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OAR-2011-0344, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file,

avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5523; fax number (202) 564-5654; email address: silverman.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed settlement agreement.

The proposed settlement agreement seeks to prevent further litigation in Portland Cement Ass'n v. EPA, 665 F. 3d 177 (D.C. Cir. 2011), which involved National Emission Standards for Hazardous Air Pollutants (NESHAP) for the portland cement source category. The court upheld the NESHAP itself (as well as the contemporaneous section 111 New Source Performance Standard), but found that EPA had arbitrarily failed to grant reconsideration of the NESHAP to consider the effect of EPA's Nonhazardous Secondary Materials (NHSM) rule on the standards, 76 FR 15456 (Mar. 21, 2011), which rule had the effect of reclassifying some cement kilns as commercial and solid waste incinerators. Portland Cement Ass'n v. EPA, 665 F. 3d 177, 186-189 (D.C. Cir. 2011). Following issuance of the court's opinion, but before the deadline for seeking rehearing from the panel which decided the case, or seeking rehearing en banc from the entire Circuit, EPA chose to reconsider aspects of the NHSM rule. 76 FR 80452 (Dec. 23, 2011).

Under the proposed settlement agreement, EPA would propose action on reconsideration of the NESHAP by June 15, 2012 and take final action on that proposal by December 20, 2012. In that rulemaking, EPA would agree to address the remand of the D.C. Circuit, all issues on which EPA has already granted reconsideration (see 76 FR 28318 (May 17, 2011)), and a

pending petition for reconsideration of the NESHAP filed on November 15, 2011 by Holcim Cement. If supported by the administrative record, EPA would also agree to propose to extend the existing source compliance date of September 10, 2013, or in any case to discuss the possibility of extending that date, and to take final action by December 20, 2012 regarding the date of compliance.

In turn, industry petitioners would agree not to seek panel rehearing or rehearing en banc. In the event that EPA does not propose to extend the compliance date for existing sources until at least September 9, 2015, or EPA does not complete any of the other actions set out in the proposed settlement, industry petitioners could request the court (either the panel or the en banc court) to rehear the case.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the settlement agreement will be affirmed.

II. Additional information about commenting on the proposed settlement agreement.

A. How Can I Get A Copy Of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OAR-2011- 0344) contains a copy of the proposed settlement agreement. The official public docket is

available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after

the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA’s electronic public docket, EPA’s electronic mail (e-mail) system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

Dated: April 24, 2012.

Kevin W. McLean,
Acting Associate General Counsel.

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